
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

RICHARD ALLEN SMITH, JR., §
§
Plaintiff, §
§
versus § CIVIL ACTION NO. 1:07-CV-388
§
BUREAU OF PRISONS, *et al.*, §
§
Defendants. §

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Richard Allen Smith, Jr., a prisoner confined at the United States Penitentiary in Beaumont, Texas, proceeding *pro se*, filed this civil action pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the action in accordance with Federal Rule of Civil Procedure 4(m).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff contends that he is entitled to dismiss the action voluntarily because a private settlement agreement has been reached. The magistrate judge

previously entered a Report recommending that the action be dismissed voluntarily. Plaintiff objected to that Report and Recommendation because it did not reference a private settlement agreement. Plaintiff has shown no evidence that a private settlement agreement has been reached, and the defendants have not stipulated to the dismissal. Although plaintiff is allowed to dismiss the action voluntarily, he is not entitled to attach conditions to the dismissal. Plaintiff's motion to dismiss lacks merit because it is conditioned on the court's acknowledgment of an undocumented settlement agreement that he wants to enforce against the defendants. Therefore, after careful consideration, the court concludes the objections are without merit.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 14th day of March, 2008.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE